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RECORDATION NO. 9498-C

JUN 20 1978 - 4 05 PM

INTERNATIONAL COMMERCE COMMISSION

June 30, 1978

Chicago, Rock Island and Pacific Railroad Company
Lease Financing Dated as of May 1, 1978
9.25% Conditional Sale Indebtedness Due 1994
Flat Cars and Auto Racks

Dear Mr. Oswald:

Pursuant to Section 20c of the Interstate Commerce Act and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Great American Management Services, Inc. for filing and recordation counterparts of the following documents:

1(a) Conditional Sale Agreement dated as of May 1, 1978, between First Security State Bank, as Trustee, and Portec, Inc. (Paragon Division);

(b) Agreement and Assignment dated as of May 1, 1978, between Portec, Inc. (Paragon Division) and First Security Bank of Utah, N.A.

2(a) Lease of Railroad Equipment (Auto Racks) dated as of May 1, 1978, between William M. Gibbons, Trustee of the Property of Chicago Rock Island and Pacific Railroad Company and First Security State Bank, as Trustee;

(b) Lease of Railroad Equipment (Flat Cars) dated as of May 1, 1978, between Great American Management Services, Inc. and First Security State Bank, as Trustee;

8-101A105

(c) Assignment of Leases, Reassignment of Sublease, Assignment of Surety Bonds and Agreement dated as of May 1, 1978, between First Security State Bank, as Trustee, and First Security Bank of Utah, N.A., as Agent;

3(a) Sublease of Railroad Equipment dated as of May 1, 1978, between William M. Gibbons, Trustee of the Property of Chicago, Rock Island and Pacific Railroad Company and Great American Management Services, Inc.; and

(b) Assignment of Sublease and Agreement dated as of May 1, 1978, between Great American Management Services, Inc. and First Security State Bank, as Trustee.

The names and addresses of the parties to the aforementioned Agreements are as follows:

(1) Vendor-Assignee-Agent:

First Security Bank of Utah, N.A.
79 South Main Street
Salt Lake City, Utah 84111

(2) Trustee-Owner-Trustee-Lessor:

First Security State Bank
79 South Main Street
Salt Lake City, Utah 84111

(3) Builder-Vendor:

Portec, Inc. (Paragon Division)
300 Windsor Drive
Oak Brook, Illinois 60521

(4) Lessee-Sublessor:

Great American Management Services, Inc.
c/o Thayer, Ringoen & Macdonald
50 California Street (Suite 2800)
San Francisco, California 94111

(5) Trustee-Railroad-Sublessee-Debtor-Lessee:

William M. Gibbons, Trustee of the Property
of Chicago, Rock Island and Pacific

Railroad Company
322 South Michigan Avenue
Chicago, Illinois 60604

(6) Surety:

Great American Insurance Company
580 Walnut Street
Cincinnati, Ohio 45202

Please file and record the documents referred to in this letter and cross-index them under the names of the Vendor-Assignee-Agent, the Trustee-Owner-Trustee-Lessor, the Builder-Vendor, the Lessee-Sublessor, the Trustee-Railroad-Sublessee-Debtor-Lessee and the Surety.

The equipment covered by the aforementioned documents consists of the following:

147 Flat Cars, bearing identifying numbers
ROCK 990000 through ROCK 990146;

147 Bi-Level Auto Racks, attached to Flat
Cars bearing identifying numbers ROCK 990000
through ROCK 990146;

82 Flat Cars, bearing identifying numbers
ROCK 995000 through ROCK 995081; and

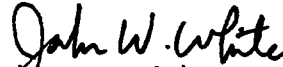
82 Tri-Level Auto Racks, attached to Flat
Cars bearing identifying numbers ROCK 995000
through ROCK 995081.

There is also enclosed a check for \$200 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document), the Lease of Railroad Equipment (Auto Racks) and the Lease of Railroad Equipment (Flat Cars) and related Assignment of Leases, Reassignment of Sublease, Assignment of Surety Bond and Agreement (together constituting two documents) and the Sublease and related Assignment of Sublease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is

requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,



John W. White
AS Agent for Great American
Management Services, Inc.

Robert L. Oswald, Esq., Secretary,
Interstate Commerce Commission,
Washington, D. C. 20423

Encls.

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BY HAND

Chicago, Rock Island and Pacific Railroad
Lease Financing Dated as of May 1, 1
9.25% Conditional Sale Indebtedness due
Flat Cars and Auto Racks

Distribution of Execution Counterpar

Participation Agreement

| | |
|----------------------|-----------------|
| | 4 RI ----- |
| | (1) |
| | 4 Owner ----- |
| | (1) |
| CS&M 28-- Agent----- | 4 GAMS ----- |
| (1) | (1) |
| | 4 INV ----- |
| | (1) |
| | 4 O-T ----- |
| | (1) |
| | 4 Builder ----- |
| | (1) |
| | 3 CS&M |

Conditional Sale Agreement

| | |
|--------------|--------------------|
| | 9 Builder----- |
| | (1) |
| CS&M 18----- | 9 Owner-Trustee--- |
| | (1) |

Auto Rack Lease

| | |
|--------------|------------|
| | 9 RI----- |
| | (1) |
| CS&M 18----- | 9 O-T----- |
| | (1) |

Flat Car Lease

| | |
|--------------|--------------------|
| | 9 GAMS----- |
| | (1) |
| CS&M 18----- | 9 Owner-Trustee--- |
| | (1) |

Sublease

| | |
|--------------|-------------|
| | 9 GAMS----- |
| | (1) |
| CS&M 18----- | 9 R.I.----- |
| | (1) |

Sublease Assignment

| | | | | | | |
|--------------|---|----------------|---|---------|-----|------|
| | | | | 1 | ICC | |
| | 9 | GAMS----- | 8 | WC&P--- | 7 | CS&M |
| | | (1) | | | | |
| CS&M 27----- | 9 | Owner-Trustee- | 8 | WC&P--- | 1 | ICC |
| | | (1) | | | 7 | CS&M |
| | 9 | R.I.----- | 8 | WC&P--- | 1 | ICC |
| | | (1) | | | 7 | CS&M |

Assignment of Leases, Reassignment of Sublease, Assignment of Surety Bond and Agreement

| | | | | | | |
|--------------|----|----------------|-----|---------|---|------|
| | | | | | 1 | ICC |
| | 11 | Agent-10-O-T-- | 9 | WC&P--- | 8 | CS&M |
| | | (1) | (1) | | | |
| | 10 | GAMS----- | 9 | WC&P--- | 1 | ICC |
| CS&M 41----- | | (1) | | | 8 | CS&M |
| | 10 | RI----- | 9 | WC&P--- | 1 | ICC |
| | | (1) | | | 8 | CS&M |
| | 10 | GA Ins. Co.-- | 9 | WC&P--- | 1 | ICC |
| | | (1) | | | 8 | CS&M |

Agreement and Assignment

| | | | | | | |
|--------------|----|----------------|-----|---------|---|------|
| | | | | | 1 | ICC |
| | 11 | Agent-10-O-T-- | 9 | WC&P--- | 8 | CS&M |
| | | (1) | (1) | | | |
| | 10 | Builder----- | 9 | WC&P--- | 1 | ICC |
| | | (1) | | | 8 | CS&M |
| | 10 | GAMS----- | 9 | WC&P--- | 1 | ICC |
| CS&M 51----- | | (1) | | | 8 | CS&M |
| | 10 | GA Ins. Co.-- | 9 | WC&P--- | 1 | ICC |
| | | (1) | | | 8 | CS&M |
| | 10 | RI----- | 9 | WC&P--- | 1 | ICC |
| | | (1) | | | 8 | CS&M |

Trust

| | | | | |
|--------------|---|-----------------|---|------|
| | 8 | Owner-Trustee-- | 7 | CS&M |
| CS&M 16----- | | (1) | | |
| | 8 | Owner----- | 7 | CS&M |
| | | (1) | | |

Surety Bonds

Original bond (Flat Cars and Auto Racks)

GAMS 1-----1-Surety-----1-Owner-Trustee-----1-Agent
copies:

Surety-----2-CS&M
(makes 2 copies)
Owner-Trustee-----2-CS&M
(makes 2 copies)

Acknowledgement and Approval of Flat Car Bond

5-Owner-----4-CS&M
(1)
GAMS 10-----
5-Investor-----4-CS&M
(1)

Acknowledgement and Approval of Auto Rack Bond

5-Owner-----4-CS&M
(1)
GAMS 10-----
5 Investor-----4-CS&M
(1)

Note: WC&P = Wilmer, Cutler & Pickering (CS&M Washington correspondent).
Bracketed numbers indicate counterparts to be retained.
Unbracketed numbers indicate counterparts each party receives.

9490-C

RECORDATION NO. Filed & Recorded

JUN 30 1978 4 PM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT
(Flat Cars)

Dated as of May 1, 1978,

between.

GREAT AMERICAN MANAGEMENT SERVICES, INC.,

as Lessee

and

FIRST SECURITY STATE BANK,
not in its individual capacity, but solely as Owner-Trustee for
MERRILL LYNCH LEASING INC.,

as Lessor

LEASE OF RAILROAD EQUIPMENT dated as of May 1, 1978, between GREAT AMERICAN MANAGEMENT SERVICES, INC., a Delaware corporation (hereinafter called the Lessee), and FIRST SECURITY STATE BANK, a Utah corporation, acting not in its individual capacity but solely as Trustee (hereinafter, together with its successors and assigns, called the Owner-Trustee) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement), with MERRILL LYNCH LEASING INC. (hereinafter called the Owner).

The Owner-Trustee has entered or will enter into a conditional sale agreement (hereinafter called the Security Document) with Portec, Inc. (Paragon Division) (hereinafter called the Builder), pursuant to which the Owner-Trustee has agreed or will agree to purchase and take delivery of the railroad equipment described in Schedule A hereto (hereinafter called the Equipment).

The Builder is assigning its interests in the Security Document pursuant to an Agreement and Assignment (hereinafter called the Assignment) to First Security Bank of Utah, N.A., acting as Agent (hereinafter together with its successors and assigns called the Vendor), under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) with the Lessee, William M. Gibbons, Trustee of the Property of Chicago, Rock Island and Pacific Railroad Company (hereinafter called the Sub-lessee), the Owner-Trustee, the Builder, the Owner and the party or parties named in Schedule A thereto (hereinafter called the Investors).

The Lessee agrees to lease from the Owner-Trustee all the units of the Equipment (or such lesser number of units as are delivered and accepted and settled for under the Security Document) at the rentals and for the term and upon the conditions hereinafter provided (each such unit so leased being hereinafter called a Unit).

To assure payment of certain of its obligations under this Lease, the Lessee, as principal, agrees to deliver to the Owner-Trustee, as obligee, a Surety Bond (hereinafter called the Bond), issued by the Great American Insurance Company, as surety (hereinafter called the Surety),

and a form of Assumption and Assignment Agreement (hereinafter called the Assumption Agreement) to be entered into between the Surety (or its substitute permitted under the Bond) and the Owner-Trustee, if the Surety so elects, being attached as an exhibit thereto, substantially in the forms thereof approved by the Investors, the Vendor and the Owner-Trustee prior to the execution of this Lease.

The Lessee intends to sublease the Units pursuant to a Sublease of Railroad Equipment dated as of the date hereof (hereinafter called the Sublease) with the Sublessee, and to assign the Sublease to the Owner-Trustee pursuant to an Assignment of Sublease and Agreement dated as of the date hereof (hereinafter called the Sublease Assignment) and the Sublessee will consent to the Sublease Assignment pursuant to a Consent and Agreement substantially in the form attached thereto (hereinafter called the Sublease Assignment Consent).

The Owner-Trustee will assign certain of its rights under this Lease, the Bond, the Sublease and the Sublease Assignment as security to the Vendor pursuant to an Assignment of Leases, Reassignment of Sublease, Assignment of Surety Bond and Agreement dated as of the date hereof (hereinafter called the Lease Assignment) and each of the Lessee, the Surety and Sublessee will consent to the Lease Assignment pursuant to a Consent and Agreement substantially in the form attached thereto (hereinafter collectively called the Consents).

NOW, THEREFORE, in consideration of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Owner-Trustee hereby agrees to lease the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein provided, the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Owner-Trustee or the Owner, whether under this Lease, under the Security Document or otherwise, including the Lessee's rights by subrogation hereunder or thereunder against the Owner-

Trustee or the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Owner-Trustee or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or the bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Owner-Trustee, the Owner or the Vendor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Owner-Trustee hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Document; provided, however, that such acceptance shall be in accordance with the provisions of Article 3 of the Security Document. Each delivery of a Unit to the Owner-Trustee under the Security Document shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Owner-Trustee under the Security Document. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Owner-Trustee under the Security Document and itself hereunder and to execute and deliver to the Owner-Trustee a certificate of acceptance (hereinafter called the

Certificate of Acceptance) in accordance with the provisions of Article 3 of the Security Document, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Owner-Trustee on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the Security Document pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease. The Lessee hereby represents and warrants to the Owner-Trustee that no Unit shall be put into service earlier than the date of delivery to and acceptance by the Lessee or its agent as agent for the Owner-Trustee hereunder.

§ 3. Rentals. With respect to each Unit subject to this Lease, the Lessee will pay to the Owner-Trustee as (i) basic rentals 64 consecutive equal quarterly payments, payable on March 15, June 15, September 15 and December 15 in each year, commencing March 15, 1979, and (ii) interim rental one payment on December 15, 1978. The 64 quarterly rental payments shall each be in an amount equal to 2.6130% of the Purchase Price (as defined in the Security Document) of each Unit subject to this Lease on the date of such payment. The interim rental payment shall be in an amount equal to the product of the Purchase Price of each Unit subject to this Lease on the date of payment multiplied by .0256944% for each day elapsed from and including the Closing Date (as defined in the Security Document) for such Unit to, but excluding, December 15, 1978.

In addition to the foregoing basic rentals, the Lessee will pay to the Owner-Trustee the following additional rentals: (i) an amount equal to 57.7817804% of any deficiency amount required to be paid by the Owner-Trustee pursuant to the first paragraph of Paragraph 9 of the Participation Agreement, (ii) an amount equal to 57.7817804% of any amount required to be paid by the Owner-Trustee pursuant to clause (a) of the last paragraph of Paragraph 9 of the Participation Agreement and (iii) an amount equal to 57.7817804% of any amount required to be paid by the Owner-Trustee pursuant to clause (b) of the last paragraph of Paragraph 9 of the Participation Agreement, in each case on such date as will enable the Owner-Trustee to make such payment.

If any of the quarterly rental payment dates referred to above is not a Business Day (as such term is defined in the Security Document) the quarterly rental payment otherwise payable on such date shall then be payable on the next succeeding Business Day, and no interest shall be payable for the period from and after the nominal date for payment thereof to such next succeeding Business Day.

The Owner-Trustee irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments (other than payments under § 6 and § 23 hereof) due the Owner-Trustee provided for in this Lease including, but not limited to, all payments provided for in this § 3 and in § 7 hereof, (i) for so long as the Security Document shall remain in effect, to the Vendor, for the account of the Owner-Trustee, in immediately available funds at or prior to 11 a.m. (Salt Lake City Time) to the office of the Vendor (at 79 South Main Street, Salt Lake City, Utah 84111, Attention of Trust Department, Corporate Trust Division) on the date due, with instructions to the Vendor to apply such payments in accordance with the provisions of the first paragraph of Paragraph 10 of the Participation Agreement, and (ii) if the Security Document shall no longer be in effect, to the Owner-Trustee or as directed by the Owner-Trustee in immediately available funds at such place as the Owner-Trustee shall specify in writing.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on December 15, 1994. Except for obligations of the Lessee hereunder which are specifically stated to terminate at a fixed time, the obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 3, 6, 7, 9, 11, 14, 19 and 23 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the Security Document. If an event of default should occur under the Security Document as provided in § 10(D) hereof, the Vendor may terminate this Lease (or rescind its termination) and/or the Sublease (or rescind its

termination) or any other sublease (or rescind its termination), all as provided therein.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain or cause to be kept and maintained, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words, "OWNER-SHIP SUBJECT TO A SECURITY AGREEMENT FILED UNDER THE INTER-STATE COMMERCE ACT, SECTION 20c", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested in order to protect the Owner-Trustee's title to and the Vendor's security interest in such Unit and the rights of the Owner-Trustee under this Lease and of the Vendor under the Security Document. The Lessee will not place or permit any such Unit to be placed in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such name and words which may be removed, defaced, obliterated or destroyed. The Lessee will not change or permit to be changed the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Owner-Trustee and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Document shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Owner-Trustee an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Vendor's and the Owner-Trustee's interests in such Units and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Owner-Trustee in such Units.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted

as a claim of ownership; provided, however, that the Lessee may permit the Equipment to be lettered with the names, trademarks, initials or other insignias customarily used by the Sublessee, so long as the Sublease shall remain in effect, or any other sublessee of the Equipment permitted by § 12 hereof, so long as a sublease with such sublessee shall remain in effect, or their respective affiliates, on railroad equipment used by them of the same or a similar type for convenience of identification of their respective rights to use the Equipment under the Sublease or such other sublease, and the Equipment may be lettered in an appropriate manner for convenience of identification of the interest of the Sublessee or such other sublessee therein.

§ 6. Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay or cause to be paid, and on written demand to indemnify and hold the Owner-Trustee, the Owner, the Builder, the Vendor, the Investors and the estate held by the Owner-Trustee under the Trust Agreement and by the Vendor under the Security Document and the Participation Agreement harmless from all taxes (income, gross receipts, franchise, sales, use, property [real or personal, tangible or intangible], stamp and minimum [imposed under Section 56 of the Internal Revenue Code of 1954, as amended] taxes), assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner-Trustee, the Owner, the Builder (other than any such amounts which are the responsibility of the Builder under Article 6 of the Security Document), the Vendor, the Investors, the Lessee, the trust estate created by the Trust Agreement, the estate held by the Vendor under the Security Document and the Participation Agreement, or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to: any Unit or any part thereof; the manufacture, purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom; this Lease, the Lease Assignment, the Consents, the Sublease, the Sublease Assignment, the Sublease Assignment Consent, the Trust Agreement, the Participation Agreement (including the certificates of interest and the issuance

thereof to Investors pursuant thereto), the Security Document, the Bond, the Assumption Agreement or the Assignment; any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to property held by the Owner-Trustee under the Trust Agreement or by the Vendor under the Security Document and the Participation Agreement (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called Taxes); excluding, however: (i) Taxes of the United States or of any state or local government or governmental subdivision or authority thereof and (if and to the extent that any person indemnified hereunder is currently allowed a credit therefor against its United States Federal income taxes) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Owner-Trustee (in its individual capacity), the Owner, the Investors or the Vendor (in its individual capacity), other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease or the Sublease, provided that such Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or jurisdiction on its worldwide income without regard to the transactions contemplated by this Lease or the Sublease shall be excluded whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by or on behalf of the Owner or any transfer or disposition by or on behalf of the Owner resulting from bankruptcy or other proceedings for the relief of creditors in which the Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease, without the consent of the Lessee, unless, in each case, such transfer or disposition is in connection with a Casualty Occurrence or an Event of Default shall have occurred and be continuing; (iii) any Taxes imposed on or measured by any trustee or agency fees received by the Owner-Trustee or the Vendor; and (iv) Taxes which are imposed on or measured solely by the net income of the Owner-Trustee or the Vendor if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Lessee has not agreed to pay or indemnify against pursuant to this § 6; provided, however, that the Lessee shall not be required to pay any Taxes during the period it may be contesting or causing to be contested the same in the manner provided in the fourth paragraph of this § 6. The Lessee

further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee (or the affiliated group, within the meaning of section 1504 of the Internal Revenue Code of 1954, as amended, of which the Lessee is a member) under the laws of the United States or of any state or local government or governmental subdivision thereof, or of any foreign country or subdivision or authority thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; provided, however, that the Lessee shall not be required to pay any such tax during the period it may be contesting the same in good faith by appropriate proceedings.

The amount which the Lessee shall be required to pay with respect to any Taxes indemnified against pursuant to this § 6, shall be an amount sufficient to restore the indemnified party to the same after-tax position such indemnified party would have been in had such Taxes not been imposed.

In the event that the Owner-Trustee shall become obligated to make any payment to the Builder or the Vendor pursuant to Article 6 of the Security Document, or the Owner shall become obligated to make any payment to the Owner-Trustee pursuant to any correlative provision of the Trust Agreement, not covered by the first paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed Taxes hereunder) to the Owner-Trustee or the Owner as will enable the Owner-Trustee or the Owner to fulfill completely its obligations pursuant to said provision. The Owner-Trustee agrees not to enter into any amendment of the Security Document or the Trust Agreement which would adversely affect the interest of the Lessee hereunder without the written consent of the Lessee.

If claim is made against any indemnified party for any Taxes indemnified against under this § 6, such party shall promptly notify the Lessee. If the Lessee has obtained an opinion of independent counsel, addressed to the Owner-Trustee and the Vendor, that good grounds exist to contest such claim and there is not and will not be any material impairment of the interest of the Owner-Trustee or the Vendor in the Equipment during the period of such contest, (i) if reasonably requested by the Lessee in writing, such indemnified party shall, upon receipt of indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the

same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both or (ii) the Lessee may contest, or cause to be contested, at its own expense, the validity, applicability or amount of such Taxes in the name of such indemnified party; provided that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of such indemnified party in any such proceeding or action) without the prior written consent of such indemnified party, which consent shall not be unreasonably withheld. If such indemnified party shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon applicable to the amount paid by the Lessee and the period of such payment, such indemnified party shall pay to the Lessee the amount of such refund or interest net of expenses, but only if no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing.

In case any report or return is required to be made with respect to any obligation of the Lessee under this § 6 or arising out of this § 6, except obligations resulting from the second sentence of the first paragraph of this § 6, the Lessee shall either make or cause to be made such report or return in such manner as will show the interests of the Owner-Trustee and the Vendor in the Units, or shall promptly notify or cause to be notified the Owner-Trustee, the Owner and the Vendor of such requirement and shall make or cause to be made such report or return in such manner as shall be satisfactory to the Owner-Trustee, the Vendor and the Owner. All costs and expenses (including reasonable legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

All the obligations of the Lessee under this § 6 shall survive and continue, notwithstanding payment in full of all amounts due under the Security Document or the termination of this Lease, but only with respect to periods included in the term of this Lease. Payment due from the Lessee under this § 6 shall be made directly to the indemnified party, except to the extent paid to a governmental agency or taxing authority. The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of the payment of any installments of principal or interest payable under the Security Document, or a guarantee of any value of the Equipment following the expiration of the term hereof as such term

may or may not be renewed.

The Lessee shall furnish or cause to be furnished promptly, upon request, such information and data as are normally available to the Lessee and which the Owner-Trustee, the Vendor or the Owner reasonably may require to permit compliance with the requirements of any taxing authorities.

§ 7. Payment for Casualty Occurrences; Insurance.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee, the Sublessee or any other sublessee permitted under § 12 hereof for a period of 90 consecutive days, except requisition for use by the United States Government for a period not in excess of the then remaining term of this Lease (such occurrences being hereinafter called Casualty Occurrences), during the term of this Lease, or until such Unit shall have been returned in the manner provided in § 11 or 14 hereof, the Lessee shall promptly and fully notify or cause to be notified (after the Lessee, the Sublessee or any sublessee permitted under § 12 hereof has knowledge of such Casualty Occurrence) the Owner-Trustee and the Vendor with respect thereto. On the rental payment date (not earlier than the first regular quarterly rental payment date) next succeeding the delivery of such notice (or, in the event such rental payment date will occur within 15 days after delivery of notice, on the following rental payment date, or, in the event the term of this Lease has already expired or will expire within 15 days after delivery of such notice, on a date within 15 days of such delivery), the Lessee shall pay or cause to be paid to the Owner-Trustee an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value of such Unit as of such payment date (such rental payment date being hereinafter called the Calculation Date). Upon the making of such payment by or on behalf of the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Owner-Trustee shall be entitled to recover possession of such Unit.

If the date upon which the making or causing to be made of such payment by the Lessee in respect of any Unit as

required as aforesaid shall be after the term of this Lease in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term but the Lessee, in addition to paying the Casualty Value for such Unit shall pay or cause to be paid interest thereon from the end of such term to the date of such payment at the prime rate of interest which Manufacturers Hanover Trust Company charges on the date of such payment for 90-day unsecured loans to large corporate borrowers of the highest credit standing.

The Owner-Trustee hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, before or after the expiration of this Lease, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Owner-Trustee and no Event of Default hereunder, or event which with notice or lapse of time or both would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall be entitled to retain the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Owner-Trustee. If any such Event of Default or event has occurred and is continuing, the Lessee shall promptly pay all such proceeds to the Owner-Trustee.

The Casualty Value of each Unit as of the Calculation Date for each such Unit shall be that percentage of the Purchase Price of each Unit as is set forth in Item I of Schedule B hereto opposite such date. The aforesaid percentages have been computed without regard to recapture of the Investment Credit (as defined in § 23 hereof). Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence during the period preceding the third, fifth or seventh anniversary of the date of delivery and acceptance of such Unit shall be increased by the applicable percentage of the Purchase Price set forth in Item II of Schedule B hereto and such additional amounts, if any, shall be included within the meaning of the term "Casualty Value" as used herein.

In the event of the requisition for use of any Unit during the term of this Lease or any renewal thereof, unless such requisition shall constitute a Casualty Occurrence, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Owner-Trustee pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return rather than at the end of the term of this Lease; but the Lessee shall in all other

respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Owner-Trustee or the Lessee from the requisitioning authority for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing; and all payments received by the Owner-Trustee or the Lessee from the requisitioning authority for the use of such Unit after the term of this Lease, shall be paid over to, or retained by, the Owner-Trustee.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee shall at all times while this Lease is in effect maintain or cause to be maintained, at its own expense, property and casualty insurance in respect of the Units at the time subject hereto, at least in amounts and against risks customarily insured against by railroad companies on similar equipment owned by them and in amounts and against risks customarily insured against by the Sublessee or any other sublessee permitted by § 12 hereof on similar equipment owned by it; provided, however, that, subject to availability, the amount of such coverage shall not, at any time, be less than \$10,000,000 (with a deductible of not greater than \$1,000,000) per occurrence. The proceeds of such insurance shall be payable to the Vendor, the Owner-Trustee, the Lessee, the Surety, the Sublessee and any other sublessee permitted under the Lease as their respective interests may appear.

The Lessee will, at all times prior to the return of the Equipment to the Owner-Trustee in accordance with the terms of this Lease, at its own expense, carry and maintain or cause to be carried and maintained public liability insurance, naming the Owner, the Owner-Trustee, the Surety and the Vendor as additional named insureds as their respective interests may appear, at least in amounts and against risks customarily insured against by railroad companies on similar equipment owned by them and in amounts and against risks customarily insured against by the Sublessee or any other sublessee permitted by § 12 hereof in respect of similar equipment owned by it; provided, however, that, subject to availability, the amount of such coverage shall not, at any time, be less than \$29,000,000 (with a deductible of not greater than \$2,000,000) per occurrence.

The Lessee shall obtain from each insurer under the two paragraphs immediately above an agreement, by endorsement or separate instrument, that such insurer will give the Owner-Trustee, the Surety and the Vendor 30 days written notice before such insurer's policy shall be materially altered or canceled or not renewed. In January of each year, the Lessee shall deliver to the Owner-Trustee, the Surety and the Vendor a certificate of insurance by or on behalf of each insurer stating the coverage, named insureds and limits of each such policy.

§ 8. Reports. On or before April 1 in each year, commencing with the calendar year 1979, the Lessee will furnish or cause to be furnished to the Owner-Trustee, the Owner and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Document, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or, in the case of the first such statement, since the date of this Lease (specifying the dates of such Casualty Occurrences) or to the knowledge of the Lessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Owner-Trustee or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by § 5 hereof and the Security Document have been preserved or replaced. The Owner-Trustee shall have the right by its agents to inspect the Units and the Lessee's and its agent's records with respect thereto at such reasonable times as the Owner-Trustee may request during the continuance of this Lease.

The Lessee agrees at its expense to prepare and deliver or cause to be prepared and delivered to the Owner-Trustee within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Owner-Trustee) any and all reports (other than income tax returns) to be filed by the Owner-Trustee with any Federal, state or other regulatory authority by reason of the ownership by the Owner-Trustee or the Vendor of the Units or the leasing thereof to the Lessee or the subleasing thereof to the Sublessee or any other sublessee permitted by § 12 hereof.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification. NEITHER THE OWNER-TRUSTEE NOR THE OWNER MAKES, HAS MADE OR SHALL BE

DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND NEITHER THE OWNER-TRUSTEE NOR THE OWNER MAKES ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT THEREOF (EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE), it being agreed that all such risks, as between the Owner-Trustee and the Lessee, are to be borne by the Lessee; but the Owner-Trustee hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Owner-Trustee and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Owner-Trustee may have against the Builder. The Owner-Trustee and the Owner shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstance in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Owner-Trustee that the Units described therein are in all the foregoing respects satisfactory to the Lessee; and the Lessee will not assert any claim of any nature whatsoever against the Owner-Trustee or the Owner based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Owner-Trustee, the Owner and the Vendor, to comply and to cause the Sublessee and any other sublessee to comply with in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its, the Sublessee's or any other sublessee's operations involving the Units may extend, with the interchange rules of the Association of American Rail-

roads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units and in the event that such laws or rules require any alteration, replacement, modification or addition of or to any part of any Unit, the Lessee will or will cause the Sublessee or any other sublessee to fully conform therewith at no expense to the Owner-Trustee or the Vendor; provided, however, that the Lessee may upon written notice to the Owner-Trustee and the Vendor, in good faith, contest or cause to be contested the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Owner-Trustee or the Vendor, adversely affect the property or rights of the Owner-Trustee or the Vendor under this Lease or under the Security Document.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted.

The Lessee and its affiliates, at their own cost and expense, may from time to time make or permit the Sublessee or any other sublessee permitted under § 12 hereof to make such alterations, modifications and additions (including, without limitation, any special devices, assemblies or racks at any time attached or affixed to any Unit, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the United States Department of Transportation or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit) (hereinafter collectively called Additions) to the Units as the Lessee may deem desirable in the proper conduct of its or any sublessee's business so long as such Additions shall not be inconsistent with the continuing operation of the Units, and shall not diminish the value, utility or condition of the Units below the value, utility and condition thereof immediately prior to the making of such Additions, assuming the Units were then in the condition required to be maintained by the terms of this Lease; provided, however, that no such Addition shall be made if in the case of an alteration or modification the Unit cannot be readily restored to its original condition imme-

diately prior to the time such alteration or modification was made or in the case of an addition the addition is not readily removable from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which the Unit would have had immediately prior to such time had such addition not been made.

Title to all Parts (as hereinbelow defined) incorporated in or installed as part of the Units shall without further act vest in the Owner-Trustee and be subject to a valid first lien and prior perfected security interest under the Security Document in the following cases: (i) such Part is in replacement of or in substitution for, and not in addition to, any Part originally incorporated in or installed as part of a Unit at the time of the acceptance thereof hereunder or any Part in replacement of, or in substitution for, any such original Part, (ii) such Part is required to be incorporated in or installed as part of the Units pursuant to the terms of the second or third paragraph of this § 9, (iii) notwithstanding the provisions of the fourth paragraph of this § 9, such Part cannot be readily removed from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which such Unit shall have had at such time had such alteration or addition not occurred or (iv) such Part is included within the term "Auto Rack Equipment" as defined in the Security Document. In all other cases, if no Event of Default, or event which with notice or lapse of time or notice or both would constitute an Event of Default, shall have occurred and be continuing, title to Parts incorporated in or installed as parts of the Units as a result of such alterations or additions shall vest in the Lessee or its sublessees. The term Part for the purposes of this paragraph and § 14 hereof shall be defined to include any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit.

The Lessee acknowledges that the Owner-Trustee and the Vendor, directly or through their agents, shall have the right, at their cost and expense, upon written notice to the Lessee, to remove the Auto Rack Equipment (as so defined) from any Unit following the occurrence of an Event of Default under and as defined in the Auto Rack Lease (as defined in the Security Document) between the Owner-Trustee and the Railroad.

The Lessee shall pay or cause to be paid, and shall protect, indemnify and hold the Owner-Trustee and the Owner, the Investors and the Vendor, and their respective successors, assigns, agents and servants (hereinafter called Indemnified

Persons), as third party beneficiaries hereof, harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses (including without limitation reasonable attorneys' fees and expenses of any Indemnified Person) relating thereto) in any way relating to or arising or alleged to arise out of this Lease or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, sublease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort or imposed by statute; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Owner-Trustee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation (except by the Indemnified Person seeking indemnity hereunder), of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, subleasing, ownership, use, replacement, adaptation or maintenance thereof; (vii) any claim arising out of any of the Owner-Trustee's obligations under the Lease Assignment, the Security Document or the Participation Agreement, except to the extent such claim arises from a negligent act or negligent omission or willful wrongdoing of the Owner-Trustee; or (viii) any claim arising out of the Vendor's holding a security interest under the Security Document or the Lease Assignment. All payments hereunder shall be made directly to the Indemnified Person. The Lessee shall be obligated under this § 9, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 9 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee

may and, upon such Indemnified Person's reasonable request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this § 9, the Lessee shall pay or cause to be paid to such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Owner-Trustee each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of, or the making of provision satisfactory to the Indemnified Person for the full payment of, any indemnities as contained in this § 9 by the Lessee, and provided that no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this § 9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter.

The Lessee further agrees to indemnify, protect and hold harmless the Owner-Trustee and the Investors, the Vendor and the Owner, as third party beneficiaries hereof, from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Owner-Trustee and the Investors, the Vendor and the Owner because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee or the Railroad and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee or the Railroad

and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder under the Security Document.

The indemnities contained in this § 9 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by any Indemnified Person. None of the indemnities in this § 9 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee or the Owner-Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of any payment or other obligation, including without limitation the payment of any installments of principal or interest, under the Security Document, or a guarantee of any value of the Equipment following the expiration of the term hereof as such term may or may not be renewed.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

(A) payment of any part of the rental provided in § 3 or § 13 hereof or payment in respect of any Casualty Occurrence pursuant to § 7 hereof shall not be made by or on behalf of the Lessee, and such failure to make payment shall continue for 10 business days after such payment is due; or

(B) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement, and such default shall continue for 30 days after written notice from the Owner-Trustee or the Vendor to the Lessee and the Surety specifying the default and demanding that the same be remedied; or

(C) the Lessee shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator of itself or any of its properties or assets, (ii) be

unable, or admit in writing its inability, to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law or if corporate action shall be taken by it for the purpose of effecting any of the foregoing; or any proceedings shall be commenced against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee under this Lease or under the Participation Agreement under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Participation Agreement), and such proceedings shall continue unstayed and in effect for any period of 60 days; or

(D) an event of default set forth in subparagraph (e) with respect to the Surety, or in subparagraph (g), of Article 15 of the Security Document shall have occurred; or, any other event of default set forth in such Article 15 shall have occurred and either (i) such event results from any default by the Lessee in performing any of its obligations hereunder or under the Participation Agreement or (ii) the Payments (as defined in the Lease Assignment) are not being applied as provided in Paragraph 1 of the Lease Assignment;

then, in any such case, if the Sublease is then in effect, upon notice by the Owner-Trustee to the Lessee, and without any other action or consents (i) the participation of the Lessee as sublessor under the Sublease or any other sublease shall be terminated and (ii) the Owner-Trustee shall be substituted for the Lessee, for all purposes, as the sublessor under the Sublease or such other sublease, and, whether or not such notice is given, the Owner-Trustee may proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof. The Owner-Trustee, at its option, may, in any such case:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease,* whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Owner-Trustee may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Owner-Trustee shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Owner-Trustee, in its sole discretion, shall specify: (x) a sum with respect to each Unit which represents the excess of (1) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (2) the then present value of the rentals which the Owner-Trustee reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6% per annum discount, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, together with any damages and expenses,

* Notice: termination of this Lease prior to the end of certain periods provided in the Bond may prevent satisfaction of certain conditions precedent to recovery under the Bond.

including reasonable attorneys' fees, in addition thereto which the Owner-Trustee shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of the rental; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Owner-Trustee reasonably estimates to be the sales value (after deduction of all estimated expenses of such sale) of such Unit at such time; provided, however, that in the event the Owner-Trustee shall have sold or leased any Unit, the Owner-Trustee, in lieu of collecting any amounts payable to the Owner-Trustee by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Owner-Trustee and the Lessee shall pay to the Owner-Trustee on the date of such sale or leasing, as the case may be, as liquidated damages for loss of a bargain and not as a penalty (i) in the case of such a sale an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination, over the net proceeds of such sale, and (ii) in the case of such a leasing, an amount equal to the excess, if any, of the present value of all rental for such Unit which would otherwise have accrued hereunder from the date of termination to the end of the term of this Lease as to such Unit over the sum of (I) the then present value of all rental for such Unit required under such new lease plus (II) the then present value of the rental (if any) which the Owner-Trustee reasonably estimates to be obtainable for the Unit during the period commencing on the termination of such new lease and ending on the date the term of this Lease would have terminated if it had not been terminated early due to default, each such present value to be computed in each case on the basis of a 6% per annum discount, compounded, in the case of rental which is estimated under clause II of this sentence, quarter-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated and, in the case of rental under such new lease, periodically from the respective dates upon which such rental shall be payable thereunder.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing

remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Owner-Trustee's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Owner-Trustee shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder and agrees to make such rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Owner-Trustee to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies; and a waiver of any such right on one occasion shall not constitute a waiver of such right as to any other occasion and shall not be effective unless in writing signed by the Owner-Trustee.

The Lessee also agrees to furnish the Owner-Trustee, the Owner, the Surety and the Vendor, promptly upon any responsible officer's becoming aware of any condition which constitutes an Event of Default, or which with notice or lapse of time or both would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this § 10 a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate official of the Lessee who in the normal performance of such official's operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

The Lessee acknowledges that it has been advised that the Owner-Trustee and the Surety have entered into the Bond which provides that in the event of an Event of Default under this Lease, the Surety or the Surety's substitute permitted under the Bond (references to Surety in this paragraph to mean Surety or the Surety's substitute) shall

have the right to assume all the rights and obligations of the Lessee under this Lease and to receive an assignment of this Lease and/or of the Owner-Trustee's rights against the Lessee under this Lease. The Lessee agrees that upon receiving notice of any such assumption from the Surety, it will upon request of the Surety and at the option of the Surety (i) deliver possession of the Units to the Surety and convey, transfer or assign to the Surety as provided in § 11 below as though the Surety were named as the Owner-Trustee therein, all the Lessee's right, title and interest in the Sublease and any other subleases, car contracts or other agreements with respect to the Units and take any other action and execute any documents reasonably requested by the Surety or the Owner-Trustee, which such delivery of the Units and conveyance, transfer or assignment shall terminate Lessee's leasehold interest in the Units but shall not release Lessee from any unfulfilled obligations under this Lease or (ii) become the sublessee of the Surety in respect of the Units with the rights and obligations of the Surety and the Lessee being the same as if the Surety had originally been designated as the lessor under this Lease in place of the Owner-Trustee. Lessee further acknowledges and agrees that no payment by Surety or for Surety's account, to the Owner-Trustee, whether under the Bond or pursuant to said assumption or otherwise, shall constitute an amount arising in respect of a sale or lease of the Units of Equipment for purposes of measuring liquidated damages recoverable, whether by Owner-Trustee or the Surety or any other person and whether by subrogation, assignment of rights or otherwise, from the Lessee pursuant to paragraph (b) of this § 10.

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver or cause to be delivered possession of the Units to the Owner-Trustee and shall give or cause to be given prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any Unit so to return such Units. Each Unit returned to the Owner-Trustee pursuant to this § 11 shall (i) if the Lessee is so directed by the Owner-Trustee or the Vendor, have the Auto Rack Equipment detached therefrom at the cost, expense and risk of the Lessee, (ii) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear and modifications, if any, permitted by this Lease excepted and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. For the purpose of delivering possession of any Unit or Units to the

Owner-Trustee as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner cause such Units to be transported to such location as shall reasonably be designated by the Owner-Trustee and there assembled,

(b) furnish and arrange for the Owner-Trustee to store such Units on any lines of railroad or premises approved by the Owner-Trustee until such Units have been sold, leased or otherwise disposed of by the Owner-Trustee, and

(c) cause the Units to be moved to such interchange point or points as shall be designated by the Owner-Trustee upon any sale, lease or other disposal of all or any of the Units.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee (and the Lessee will maintain the insurance required by § 7 of this Lease to be maintained during this period) and are of the essence of this Lease; and, upon application to any court of equity having jurisdiction in the premises, the Owner-Trustee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Owner-Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of any such Unit, to inspect the same. In the event that the Units or any thereof are sold, the Lessee shall pay to the Owner-Trustee the per diem interchange for each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Owner-Trustee as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Owner-Trustee, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease

shall be assignable in whole or in part by the Owner-Trustee without the consent of the Lessee; but the Lessee shall be under no obligation to any assignee of the Owner-Trustee other than the Vendor except upon written notice of such assignment from the Owner-Trustee. All the rights of the Owner-Trustee hereunder (including, but not limited to, the rights under §§ 6, 7, 10 and 23 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Owner-Trustee's assigns, including the Vendor.

So long as no Event of Default hereunder shall have occurred, the Lessee shall be entitled to the possession of the Units in accordance with the terms of this Lease but, except pursuant to the Sublease or as permitted by the provisions of the following two paragraphs, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than as permitted by the provisions of the following two paragraphs and other than an encumbrance created by the Owner-Trustee or the Vendor and not the result of an Event of Default or resulting from claims against the Owner-Trustee or the Vendor not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Owner-Trustee, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor and the Owner-Trustee, materially adversely affect the interest of the Vendor or the Owner-Trustee in the Equipment, the Vendor's interest in said income and proceeds from the Equipment, or otherwise under this Lease or the Security Document. Except pursuant to the Sublease and except to the extent permitted by the provisions of the following two paragraphs, the Lessee shall not part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the following two paragraphs.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms hereof and

to permit the use of the Units by the Sublessee or by a railroad company or companies incorporated in the United States of America with which the Sublessee has contractual arrangements for the use of the Units for its benefit upon trackage owned or operated by it or upon lines of railroad owned or operated by such railroad company or companies or over which such railroad company or companies have trackage or other operating rights or over which railroad equipment of such railroad company or companies is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease, the Sublease and the Security Document; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the operation and maintenance thereof outside the United States of America. The Lessee and the Sublessee may receive and retain compensation for such use from other railroads so using any of the Units.

Upon termination of the Sublease, if the Lessee shall not be in default under this Lease, the Lessee may sublease the Units to or otherwise enter into agreements (any such sublease or agreement being herein called a sublease) for the use of the Units by, a railroad company or companies or other user of rolling stock located in the United States, provided that (i) the sublease shall contain provisions similar to §§ 3 (fourth paragraph), 4 (fourth paragraph), 9 (sixth paragraph), 10(a)(E) and 25 of the Sublease and such sublease shall not have a term (together with renewal options) beyond the term of this Lease (together with renewal options), (ii) such sublease shall be assigned to the Owner-Trustee under an assignment and agreement substantially in the form of the Sublease Assignment (together with a Consent and Agreement of the sublessee in the form attached thereto) and, if the Security Document is still in effect, assigned by the Owner-Trustee to the Vendor under an assignment and agreement substantially in the form of the Lease Assignment (together with a Consent and Agreement of the sublessee in the form attached thereto) and (iii) the sublease shall not contain any provisions which would, or the performance of which would, with notice or lapse of time or both, result in an Event of Default under the Lease.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any solvent corporation incorporated under the laws of any state of the United States of America or the District

of Columbia (which shall have specifically assumed the obligations of the Lessee hereunder and under the Participation Agreement by an appropriate instrument in writing) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition be in default under any provision of this Lease.

§ 13. Renewal Options and Right of First Refusal.

The Owner-Trustee intends to retain the Units for re-lease at the expiration of the term of this Lease. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Owner-Trustee not less than six months prior to the end of the original term of this Lease elect to extend the term of this Lease in respect of all, but not fewer than all, the Units then covered by this Lease for one additional four-year period commencing on the scheduled expiration of the original term of this Lease, at a quarterly rental equal to the sum of (i) 1.0565% of the Purchase Price of each Unit subject to this Lease on the date such rental is payable and (ii) the quarterly premium on the Bond as provided therein; such rental shall be payable in arrears on March 15, June 15, September 15 and December 15 in each year of the extended term of this Lease.

Provided that this Lease has not been earlier terminated, the Lessee is not in default hereunder, the Lessee has not elected to extend this Lease under the first paragraph of this § 13, the Sublease has not been earlier terminated, the Sublease has been extended as provided in the first paragraph of § 13 thereof, the Sublessee exercises the renewal option provided in the second paragraph of § 13 of the Auto Rack Lease (as defined in the Security Document) and (within 30 days after delivery of the notice referred to in this paragraph) the "Rock Island Fair Market Rental Value" as defined thereunder has been determined thereunder with respect to such renewal and the Sublessee is not in default thereunder, the Sublessee may, as third-party beneficiary hereof, by written notice delivered to the Owner-Trustee not more than six nor less than five months prior to the end of the original term of this Lease elect, on its own behalf, to extend the term of this Lease and assume the obligations of the Lessee hereunder for one additional four-year period commencing on the scheduled expiration of the original term of this Lease at a quarterly rental rate equal to the Rock Island Fair Market Rental Value (as defined below) of each

Unit then subject to this Lease; such rental shall be payable in arrears on March 15, June 15, September 15 and December 15 in each year of such four-year term. Any such election, extension and assumption of the Lease pursuant to this paragraph by the Sublessee shall be in its own capacity (and not as agent for the Lessee) and the Owner-Trustee agrees that the Lessee shall not be a party to or liable for any obligations arising under this Lease during such extension and hereby releases the Lessee with respect to any such obligations.

Provided that the Lessee exercises the renewal option provided in the first paragraph of this § 13, this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Owner-Trustee not less than six months prior to the end of the original term of this Lease, as extended pursuant to the first paragraph of this § 13, elect to extend the term of this Lease in respect of all, but not fewer than all, the Units then covered by this Lease for one additional five-year period commencing on the scheduled expiration of the term of this Lease (as so extended), at a quarterly rental rate equal to the Fair Market Rental Value of each Unit then subject to this Lease; such rental shall be payable in arrears on March 15, June 15, September 15 and December 15 in each year of the extended term of this Lease.

"Fair Market Rental Value" shall be determined on the basis of the value which would be obtained in an arm's-length transaction between an informed and willing lessee-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing lessor under no compulsion to lease. If, after 60 days from the giving of notice by the Lessee of the Lessee's election to so further extend the term of this Lease pursuant to the third paragraph of this § 13, the Owner-Trustee and the Lessee are unable to agree upon a determination of the Fair Market Rental Value of the Units, such value shall be determined in accordance with the foregoing definition by the following appraisal procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business

days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental Value of the Units prior to the expiration of the original term of this Lease, as extended pursuant to the first paragraph of this § 13. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental Value of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto as the Fair Market Rental Value. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

"Rock Island Fair Market Rental Value" shall be determined on the basis of the value which would be obtained as of the commencement of the renewal period referred to in the second paragraph of this § 13 in an arm's-length transaction between an informed and willing lessee-user with a credit standing comparable to the credit standing of the Sublessee at the commencement of such period (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing lessor under no compulsion to lease. If, after 60 days from the giving of notice by the Sublessee of the Sublessee's election to assume and extend the term of this Lease pursuant to the second paragraph of this § 13, the Owner-Trustee and the Sublessee are unable to agree upon a determination of the Rock Island Fair Market Rental Value of the Units, the right of the Sublessee to assume and extend this Lease under the election in the second paragraph of this § 13 shall expire.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, and in the event (i) the Lessee has elected to extend the original term of this Lease pursuant to the first paragraph of this § 13 but has not elected to extend the term of this Lease (as so extended) pursuant to the third paragraph of this § 13 and the Owner-Trustee elects to sell any Units to third parties at the expiration of the term of this Lease (as so extended) or (ii) the Lessee has elected to extend the original term of this Lease pursuant to the first and third paragraphs of this § 13 and the Owner-Trustee elects to sell any Units to third parties at the expiration of the term of this Lease (as so extended), the Lessee shall be given written notice of such election prior to the expiration of the term of this Lease, as so extended (such date being hereinafter called the Expiration Date). In the event that the Owner-Trustee shall receive, prior to 90 days after the Expiration Date, a bona fide offer in writing from another party to purchase the Units and the Owner-Trustee elects to sell the Units pursuant to such offer, the Owner-Trustee shall give written notice to the Lessee of such offer. Such notice shall be given to the Lessee on any date between 60 days before and 90 days after the Expiration Date and shall include the price and, if such offer was for other than solely cash, the other terms and conditions offered by the other party to the Owner-Trustee. The Lessee shall have the sole right and option, for a period of 20 days from the date of receipt of such notice, to purchase the Units for cash at the price, or at the price and (after giving effect to credit standing of the Lessee at the time of exercise of such purchase right) on substantially similar terms and conditions, at which the Units are proposed to be sold. The Lessee shall exercise such purchase right by delivery to the Owner-Trustee of a written notice specifying a date of purchase, which date shall not be later than the later of (i) 15 days after the date of delivery of such notice by the Lessee to the Owner-Trustee or (ii) 90 days after the Expiration Date. In the event that the Lessee shall have delivered a notice of its election to purchase the Units, this Lease (including the obligation to pay rent) shall be further extended or renewed upon the same terms and conditions set forth herein from the Expiration Date or the date such notice is delivered, as the case may be, to the Owner-Trustee until the date of such purchase.

§ 14. Return of Units upon Expiration of Term. On or prior to the termination of the term of this Lease or as

soon as practicable on or after the termination of the term of this Lease and in any event not later than 90 days after the termination of the term of this Lease the Lessee will, at its own cost and expense, at the request of the Owner-Trustee, cause each Unit to be transported to such point or points on the Sublessee's or any sublessee's lines as shall be designated by the Owner-Trustee immediately prior to such termination and arrange for the Owner-Trustee to store such Unit on any of Sublessee's or any sublessee's lines of railroad or premises approved by the Owner-Trustee for a period commencing on the date of its arrival at any such point and extending thereafter to a date not later than 90 days from the date at which at least 90% of such Units are first placed in storage pursuant to this § 14; the assembly, delivery, storage and transporting of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Owner-Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable for any injury to or the death of any person exercising, either on behalf of the Owner-Trustee or any prospective purchaser or user, the rights of inspection granted under this sentence, except in the case of negligence or willful wrongdoing of the Lessee or of its employees or agents and except to the extent otherwise provided by law. The assembly, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Owner-Trustee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Owner-Trustee pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) have attached or affixed thereto any Part title to which is in the Owner-Trustee pursuant to clause (i), (ii) or (iii) of the fifth paragraph of § 9 hereof and have removed therefrom at Lessee's expense (x) the Parts referred to in clause (iv) of the fifth paragraph of § 9 hereof (if the Owner-Trustee shall request in writing) and (y) any Part or Addition title to which is in the Lessee or any other person pursuant to such § 9 and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. If any Unit suffers a Casualty Occurrence during any storage period provided for in this § 14, the Lessee shall pay to the

Owner-Trustee the Casualty Value of such Unit as determined in accordance with § 7 hereof. All gross amounts earned in respect of any Unit shall, from and after the termination of this Lease as to such Unit, belong to and be the property of the Owner-Trustee. In the event that by the 90th day after the termination of the original or any extended term of this Lease the Lessee has not, at the request of the Owner-Trustee, caused at least 90% of the Units to be transported to such point or points as shall have been designated by the Owner-Trustee pursuant to this § 14, the Lessee shall pay to the Owner-Trustee the per diem interchange multiplied by the number of Units equal to the difference between 90% of such Units and the number of Units previously delivered pursuant to this § 14 (such number to be determined on each day) for each day from such 90th day to the date on which at least 90% of the Units have been so transported. If, after the termination of the storage period provided in this § 14, any Units have not been so transported, the Lessee shall pay to the Owner-Trustee the per diem interchange for each Unit not so transported for each day after the end of such storage period until such Unit or Units have been so transported.

Upon the expiration of the original term of this Lease on December 15, 1994, if neither the Lessee nor the Sublessee shall have elected to exercise the renewal options provided by the first and second paragraphs of § 13 hereof, the Lessee will deliver to the Owner-Trustee a certificate of an officer of the Lessee to the effect that (a) no Event of Default or any event which with lapse of time or notice or both would constitute an Event of Default had occurred or was continuing as of December 15, 1994; (b) no liens, charges, security interests or other encumbrances (except an encumbrance resulting from claims against the Owner-Trustee or the Owner) were, as of December 15, 1994, imposed on or with respect to any Unit, any accession thereto, or the interest of the Owner-Trustee or the Owner therein; (c) the Units have been returned to the Owner-Trustee pursuant to this § 14 in the same operating order, repair and condition required by the first paragraph of this § 14 and (d) the Lessee no longer has any interest in the Units under the Lease or otherwise. If a certificate of an officer of the Lessee is required to be furnished pursuant to the preceding sentence, the certificate described in clause (a) in the preceding sentence shall be furnished on December 15, 1994, and the certificates described in clauses (b), (c) and (d) in the preceding sentence shall be furnished on a monthly basis, beginning on July 1, 1994, and such certificate shall cover each Unit returned during the preceding 30 calendar days and shall

apply to each such Unit as of the date such Unit was returned pursuant to the provisions of the first paragraph of this § 14. Upon the expiration of any extended term of this Lease, if the Lessee or Sublessee shall not have elected to exercise any further renewal option or if the Lessee or Sublessee shall have no such further renewal option, the Lessee shall deliver to the Owner-Trustee a certificate of an officer of the Lessee to the foregoing effect, with such conforming changes as shall be appropriate under the circumstances.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the Security Document, the Lease Assignment, the Sublease, the Sublease Assignment, any sublease permitted by § 12 hereof (including the required assignment and reassignment thereof), and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will, at its own expense, undertake the filing, registering, deposit, and recording required of the Owner-Trustee under the Security Document and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Owner-Trustee or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Owner-Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Document or the Lease Assignment; provided, however, that the Lessee shall not be required to take any such action in respect of any jurisdiction outside the United States if (1) the Lessee deems such action to be unduly burdensome, (2) after giving effect to the failure to take such action, the Lessee has taken all action required by law to protect the title of the Owner-Trustee to and the security interest of the Vendor in Units having a Fair Value (as defined in the Security Document) of not less than 85% of the aggregate Fair Value of all the Units then subject to this Lease, and (3) any Unit at any time located in such jurisdiction shall have been marked with the markings specified in § 5 hereof.

§ 16. Additional Opinions. The Lessee will promptly furnish to the Vendor and the Owner-Trustee evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and

the Owner-Trustee. This Lease and the Security Document shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 17. Obligations of Owner-Trustee Under Security Document; Additional Rentals. In the event that the Owner-Trustee shall become obligated to make any payment (other than payments in settlement for Equipment or the principal of or interest on the Conditional Sale Indebtedness (as defined therein) pursuant to the Security Document and pursuant to the proviso to the third paragraph of Article 12 thereof) or to perform any obligations pursuant to the Security Document not covered by the provisions of this Lease, the Lessee shall pay such additional rentals hereunder and perform such obligations so that all of the Owner-Trustee's obligations (other than as aforesaid) pursuant to the Security Document shall be fully complied with, without regard for any limitation of liability of the Owner-Trustee contained in the Security Document.

§ 18. Owner-Trustee's Right To Perform for the Lessee. If the Lessee fails to perform or comply with any of its agreements contained herein, the Owner-Trustee may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Owner-Trustee incurred in connection with such performance or compliance, together with interest on such amount at the rate of 11% per annum (or such lesser amount as may be legally enforceable), shall be payable by the Lessee upon demand.

§ 19. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay an amount equal to interest at a rate of 10.25% per annum on the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 20. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered to such other party or by registered or certified mail, postage prepaid, addressed as follows:

if to the Owner-Trustee, at 79 South Main Street (Suite 310), Salt Lake City, Utah 84111, attention of Trust Division, Corporate Trust Division;

if to the Lessee, care of Thayer, Ringoen & MacDonald, 50 California Street, San Francisco, California 94111, attention of President;

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Any certificate, document or report required to be furnished by any party hereto to the other parties shall be delivered to the address set forth above for such party. Any notice to the Lessee by the Vendor or the Investors regarding the Lessee's failure to perform any obligation hereunder shall also be furnished by the Lessee to the Owner-Trustee.

§ 21. Owner-Trustee Acting as Trustee. The representations, undertakings and agreements herein made on the part of the Owner-Trustee are made and intended for the purpose of binding only the Trust Estate as such term is defined in the Trust Agreement.

Whenever the term Owner-Trustee is used in this Lease it shall apply and refer to the Owner-Trustee and any assignee of the Owner-Trustee.

§ 22. No Recourse. No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the Owner-Trustee or the Lessee, or against the Owner or any other beneficiary of a trust for which the Owner-Trustee is acting as trustee, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers, as such, or beneficiaries being forever released as a condition of and as consideration for the execution of this Lease.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Owner-Trustee are each and every one of them made and intended

not as personal representations, undertakings and agreements by the Owner-Trustee, or for the purpose or with the intention of binding the Owner-Trustee personally but are made and intended for the purpose of binding only the Trust Estate and this Agreement is executed and delivered by the Owner-Trustee solely in the exercise of the powers expressly conferred upon the Owner-Trustee as Owner-Trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Owner-Trustee or the Owner on account of any representation, undertaking or agreement hereunder of the Owner-Trustee or the Owner, either expressed or implied, except for their respective obligations under the proviso to the last paragraph of Article 12 of the Security Document and subparagraph (a) of the third paragraph of Article 4 of the Security Document; all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee; provided, however, that the Lessee or any person claiming by, through or under the Lessee making claim hereunder, may look to said Trust Estate for satisfaction of the same.

§ 23. Federal Income Taxes. This Lease has been entered into on the basis that an opinion of the chief mechanical officer of the Sublessee to the effect described in the last paragraph of this § 23 will be provided to the Owner; that the Owner, as the beneficial owner of each Unit, shall be entitled to such deductions, credits and other benefits provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including without limitation, (a) deductions for depreciation of each Unit under section 167 of the Code commencing in the year that such unit is delivered to the Owner-Trustee under the Security Document computed on the basis (i) that each Unit will have a basis under section 167(g) of the Code at least equivalent to the Purchase Price of such Unit, (ii) initially of the declining balance method, using a rate equal to 200% of the straight line rate, switching to the sum of the years-digits method authorized by sections 167(b)(2) and (3) of the Code, (iii) of the asset depreciation range and class life system permitted by section 167(m) of the Code and Income Tax Regulation § 1.167(a)-11, and (iv) of an asset depreciation period of 12 years (hereinafter called the ADR Deductions), (b) deductions with respect to interest on the Conditional Sale Indebtedness when paid or accrued, in accordance with the method of accounting on the basis of which the Owner regularly computes its income

provided such basis is authorized by and fully conforms to the provisions of section 163 of the Code (hereinafter called the Interest Deductions), (c) an investment credit pursuant to section 38 of the Code in the year that each Unit is delivered to the Owner-Trustee under the Security Document equivalent to 10% of the Purchase Price of such Unit (hereinafter called the Investment Credit) and (d) that for Federal income tax purposes all amounts includible in the gross income of the Owner with respect to the Equipment and all deductions allowable to the Owner with respect to the Equipment will be treated as derived from, or allocable to, sources within the United States.

The Lessee represents and warrants that (i) all of the Units constitute property the entire Purchase Price of which qualifies for the Investment Credit under section 50 of the Code; (ii) at the time the Owner-Trustee becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of section 48(b) of the Code and at the time the Owner-Trustee becomes the owner of the Units, the Units will not have been used or placed in service by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Owner-Trustee; (iii) at all times during the term of this Lease and the Sublease, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code; and (iv) the Lessee will use its best efforts to maintain or cause to be maintained sufficient records to verify for each year the period of time in such year during which each Unit is physically located within the United States and the period of time, if any, in such year during which each Unit is physically located outside of the United States and will supply or cause to be supplied such records to the Owner within 90 days after receipt of a written demand therefor.

The Lessee understands that the Owner intends (a) to claim on its Federal income tax returns the Investment Credit, the ADR Deductions and the Interest Deductions and (b) to treat on its Federal income tax returns the income and deductions with respect to the Equipment as derived from, or allocable to, sources within the United States.

If, for Federal income tax purposes, as a result of any reason whatsoever, including, without limitation, an amendment to, or change in, the Code which is enacted prior to January 1, 1979 (whether or not effective for any period

prior to January 1, 1979), but excluding any of the specific occurrences or events specified in the sixth paragraph of this § 23, (a) the Owner shall not be entitled to, or shall suffer a disallowance or recapture of or shall lose the benefit of all or any portion of the Investment Credit, the ADR Deductions or the Interest Deductions or (b) any item of income or deduction with respect to the Equipment shall not be treated as derived from, or allocable to, sources within the United States (any such event described in clauses (a) or (b) of this paragraph being hereinafter called a Loss), then the Lessee, at its option, after receiving written notice from the Owner of such Loss together with a certificate of an officer of the Owner setting forth in reasonable detail the computations and methods used in calculating such Loss and the amount or amounts of the payments required to be made pursuant to clause (i) or (ii) below (such notice and certificate being hereinafter collectively called the Net Return Notice), shall either (i) commencing with the next rental payment date occurring more than 30 days after receipt by the Lessee of the Net Return Notice, which Net Return Notice may not be delivered more than 30 days prior to payment by the Owner of the tax which becomes due as a result of the Loss, increase the rental payments under this Lease over its remaining term by such an amount that will enable the Owner to realize its contemplated net return or (ii) within 30 days of receipt of the Net Return Notice, pay to the Owner in lump sum the amount required to provide the Owner with its contemplated net return. If the option under (ii) above is selected, then to the extent any Loss results in a later benefit to the Owner, payment will be made to the Lessee at the time such benefit is realized; provided, however, that the Owner shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to the Owner pursuant to the option specified in (ii) above in respect of a Loss less (y) the amount of all prior payments by the Owner to the Lessee hereunder, and the amount by which such payment would exceed such amounts shall reduce pro tanto any subsequent obligation of the Lessee to make any payments to the Owner pursuant to the option specified in (ii) above.

Any late payment by any party hereto of any of its obligations under this § 23 shall result in the obligation on the part of such party promptly to pay an amount equal to interest at the rate per annum equal to 1% over the Prime Rate compounded quarterly on the overdue payment. Prime Rate as used herein shall mean the rate per annum which

Manufacturers Hanover Trust Company, New York, New York, charges for 90-day unsecured loans to large corporate borrowers of the highest credit standing from time to time in effect for the period such interest is payable.

Notwithstanding anything to the contrary set forth hereinabove, no amount shall be payable as an indemnity hereunder in respect of any Loss to the extent such Loss is the result of any of the following:

(i) a voluntary transfer or voluntary disposition (whether prior to, during or after the term of this Lease or the Sublease, but not including a transfer or disposition or the result of a Casualty Occurrence) of any Units or of the interest of the Owner in any Units or the rentals under this Lease or the Sublease, or any transfer or disposition of any Units or of the interest of the Owner in any Units or the rentals under this Lease or the Sublease, whether voluntary or involuntary, which results from bankruptcy or other proceedings for the relief of debtors in which the Owner is the debtor, unless, in each case, such transfer or disposition is made (A) as a direct result of an Event of Default, as defined in § 10 of this Lease, which has occurred and is continuing; (B) in connection with any alteration, modification or addition to any Unit; or (C) with the consent of the Lessee;

(ii) the failure of the Owner to claim in a timely manner the Investment Credit, the ADR Deductions (including making all appropriate elections under the applicable Income Tax Regulations), the Interest Deductions or any Foreign Tax Credit or to make a timely election, if permitted by the Code, to treat income and deductions with respect to the Equipment as derived from, or allocable to, sources within the United States, unless Messrs. Shearman & Sterling, or other independent counsel selected by the Owner and approved by the Lessee, such approval not to be unreasonably withheld, shall determine that there is no reasonable basis to make such claim;

(iii) the failure of the Owner to have sufficient liability for Federal income tax against which to credit Investment Credit or foreign tax credit or sufficient income to benefit from the ADR Deductions or the Interest Deductions, as applicable;

(iv) any guarantee agreement or other voluntary act of the Owner (either individually or in concert with others) which is not included in the foregoing clauses and which is not required or contemplated by the Security Document, the Participation Agreement, the Trust Agreement, this Lease, the Sublease, the Sublease Assignment, the Sublease Assignment Consent, the Lease Assignment, the Consents, the Assignment, the Bond, the Assumption Agreement if entered into or any other document contemplated by any of the foregoing or entered into in connection therewith;

(v) a change in the form or type of organization or the taxable status of the Owner or any successor or transferee of the Owner;

(vi) a Casualty Occurrence with respect to a Unit, if the Owner-Trustee shall have received all amounts required to be paid in respect of such Casualty Occurrence under this Lease; or

(vii) any amendment to, or change in, the Code or the Income Tax Regulations which is enacted after January 1, 1979 (whether or not retroactively effective for any period on or prior to such date).

If at the conclusion of an audit the Owner receives a preliminary or "30-day-letter" from the Internal Revenue Service proposing an adjustment in any item claimed in accordance with the fourth paragraph of this § 23 on a tax return or refund claim of the Owner for which the Lessee would be required to indemnify the Owner pursuant to this § 23 and the amount of the indemnity which the Lessee would be required to pay (after taking into account the effect that the adjustment would have in periods not included in the audit) would exceed \$25,000 or in the good faith opinion of the Lessee the adjustment would have a continuing or precedential effect on the Lessee or the Sublessee or the railroad industry and the Lessee so advises the Owner in writing, the Lessee shall not be required to indemnify the Owner unless and until the Owner takes the action set forth below, provided that at any time, whether before or after commencing to take such action, the Owner may decline to take such action by notifying the Lessee in writing that the Lessee is relieved of its obligation to indemnify the Owner with respect to such adjustment or any such portion specified in such notice. Upon receipt of such preliminary or 30-day

letter the Owner shall promptly notify the Lessee of the proposed adjustment and, upon receipt within 20 days after Lessee's receipt of such notice of a written request to do so from the Lessee, the Owner shall promptly request from the independent tax counsel selected by the Owner and approved by the Lessee, which approval shall not be unreasonably withheld (hereinafter called the Owner's Tax Counsel), their opinion whether there is a reasonable basis for contesting such proposed adjustment. If the opinion is to the effect that there is a reasonable basis for contesting, the Owner shall contest such proposed adjustment beyond the level of the Internal Revenue Service auditing agent by such administrative proceedings, if any, as may be determined by the Owner in its discretion. Upon the conclusion of such administrative proceedings, if any, the Owner shall promptly notify the Lessee of the final adjustment proposed by the Internal Revenue Service and, upon receipt within 30 days thereafter of a written request to do so from the Lessee, the Owner shall promptly request the Owner's Tax Counsel for their opinion whether there is a reasonable basis for contesting such final adjustment. If the opinion is to the effect that there is a reasonable basis for contesting such final adjustment, the Owner shall contest such final adjustment in a court of competent jurisdiction. If the Lessee requests the Owner to appeal the decision of such a court or of an intermediate appellate court, the Owner shall promptly request the Owner's Tax Counsel for their opinion whether there is a reasonable basis for appealing such decision. If the opinion is to the effect that there is a reasonable basis for appealing such decision, the Owner shall appeal such decision. The Owner, in its discretion, shall determine the initial and any appellate court and, if the adjustment relates to an item claimed on a tax return, shall determine whether the proceedings shall be for redetermination of the deficiency proposed to be assessed by the Internal Revenue Service or for refund of taxes paid based on such deficiency. The Owner shall not be required to take any action as set forth in this paragraph unless and until the Lessee shall have agreed to indemnify the Owner in a manner satisfactory to the Owner for any liability or loss which the Owner may incur as a result of taking such action and shall have agreed to pay the Owner on demand all out-of-pocket costs and expenses, including without limitation attorneys' fees and expenses, incurred by the Owner in connection with taking such action. In the event that the Owner pays the tax resulting from a proposed adjustment and proceeds to seek a refund thereof, the Lessee agrees to pay the Owner an amount equal to interest at the

rate per annum currently charged by the Internal Revenue Service on deficiencies on the amount of tax in question from the date of payment of such tax to the date of final determination of such adjustment, such amount to be payable in equal installments within each calendar year on the dates on which rental for such period is payable under this Lease. Upon receipt by the Owner of a refund of any tax paid by it in respect of which the Lessee had paid an amount equal to interest at the rate provided in the preceding sentence while such tax payment was contested by the Owner, an amount equal to the aggregate amount of such interest shall be paid by the Owner to the Lessee forthwith. Upon completion of the actions set forth in this paragraph, the Lessee's liability with respect to its required indemnity under this § 23 shall become fixed and determinable.

For purposes of this § 23, the term "Owner" shall include any affiliated group, within the meaning of section 1504 of the Code, of which the Owner is a member if consolidated returns are filed for such affiliated group for Federal income tax purposes.

If at any time prior to the disposition of a Unit in a taxable transaction, the Owner is required to include in its gross income an amount in respect of any improvement and/or addition to such Unit made by the Lessee which is not readily removable from such unit without causing material damage to such Unit (such improvements or additions being hereinafter called Improvements), then the Lessee shall pay to the Owner, as an indemnity, such amount or amounts which, after deduction of all Taxes required to be paid by the Owner in respect of the receipt of such amounts, shall be equal to the sum of the additional Federal, state and local income taxes payable by the Owner from time to time as a result of such Improvement plus the amount of any interest, penalties or additions to tax payable as a result of any such Improvement (less any Federal, state or local tax benefits resulting from payment of any amounts reimbursed hereunder). If as a result of any such Improvement the aggregate Federal, state and local income taxes paid by the Owner for any taxable year shall be less than the amount of such taxes which would have been payable by the Owner had no such Improvement been made, then the Owner shall pay the Lessee the amount of such savings in taxes plus any additional tax benefits realized by the Owner as a result of such payment; provided, however, that the Owner shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of

such payment would exceed (x) the amount of all prior payments by the Lessee to the Owner pursuant to this paragraph in respect of any Improvement less (y) the amount of all prior payments by the Owner to the Lessee hereunder, and the amount by which such payment would exceed such amount shall reduce pro tanto any subsequent obligation of such Lessee to make any payments to the Owner pursuant to the first sentence of this paragraph. For purposes of computing any amounts payable to the Owner and any amounts payable to the Lessee pursuant to this paragraph, the statutory rate of Federal, state or local income tax, as the case may be, shall be used. The amount payable to the Owner pursuant to this paragraph shall be paid within 30 days after receipt of the written demand therefor from the Owner (but not prior to payment by the Owner of the additional taxes which become due as a result of the said inclusion) accompanied by a written statement describing in reasonable detail such inclusion and the computation of the amount so payable. Any payment due to the Lessee from the Owner pursuant to this paragraph shall be paid within 30 days after the Owner realizes any such savings in its income taxes or additional tax benefits, as the case may be. The Owner agrees to contest the inclusion in its gross income of any amount with respect to an Improvement to the extent, and under the circumstances, set forth in the seventh paragraph of this § 23 as if such inclusion were a Loss.

The Lessee agrees that, within 90 days after the close of any calendar year (or in the event that the Owner gives the Lessee written notice that its taxable year closes on a date specified therein other than December 31, within 90 days after said date) in which the Lessee has made Improvements, the Lessee will give written notice thereof to the Owner, describing such Improvements in reasonable detail and specifying the cost thereof with respect to each Unit of Equipment.

In the event that any indemnity payments are required to be made by the Lessee, or in the event the amount of rentals under this Lease are adjusted, pursuant to any paragraph of this § 23, the damages and amounts set forth in § 10 of this Lease and the applicable Casualty Value percentages set forth in Schedule B to this Lease shall be appropriately adjusted by the Owner (but in no event shall the applicable Casualty Values be reduced below the corresponding Fair Values as defined in the Security Document). The adjustments required to be made pursuant to this paragraph shall be made by the Owner and shall be computed using the

same method and the same assumptions, including, without limitation, tax rates, as were utilized by the Owner in originally evaluating this transaction. In connection therewith, the Owner shall provide the Lessee with a certificate of an officer of the Owner setting forth in reasonable detail the figures and methods used in making such calculations. In the case of any such adjustments in the damages and amounts set forth in § 10 of this Lease and the applicable Casualty Value percentages set forth in this Lease, if any payment of such damages, amounts or Casualty Values shall have been made prior to the adjustments made pursuant to this paragraph, (a) the Lessee shall pay to the Owner the excess amount which would have been payable on the due date of such payment by reason of the adjustments pursuant to this paragraph or (b) the Owner shall pay to the Lessee the amount of such payments in excess of the amount of such payments which would have been payable by reason of the adjustments pursuant to this paragraph. The Lessee's and the Owner's agreements to pay any sums which may become payable pursuant to this § 23 shall survive the expiration or other termination of this Lease.

The Lessee shall have the right, upon demand, to have Thayer, Ringoen & Macdonald, 50 California Street, San Francisco, California 94111, or another independent party selected by the Lessee and approved by the Owner, which approval shall not be unreasonably withheld, review any calculations made by the Owner pursuant to this § 23 to determine the consistency of the methods and the assumptions used in such calculations with those used by the Owner in originally evaluating this transaction and the accuracy of such computations based on such methods and assumptions.

The Lessee agrees that, as promptly as possible after the date hereof, it will furnish or cause to be furnished to the Owner a written opinion of the chief mechanical officer of the Sublessee to the effect that the Equipment has an estimated useful life which will extend to at least April 1, 2004, and an estimated fair market value (without including in such value any increase or decrease for inflation or deflation, and after subtracting from such value any cost to the Owner-Trustee for removal and delivery of possession of the Equipment to the Owner-Trustee) at December 15, 1998, of at least 20% of the Purchase Price of the Equipment.

§ 24. Severability; Effect and Modification of Lease; Third Party Beneficiaries. Any provision of this

Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof; and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Owner-Trustee and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto, except the Participation Agreement. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Owner-Trustee and the Lessee.

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Owner, the Builder, the Vendor, the Investors and the permitted successors and assigns of a party, each of which shall be deemed to be a third party beneficiary hereof) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party except as aforesaid.

§ 25. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor shall be deemed to be the original counterpart. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 26. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

§ 27. Agreement for Benefit of the Owner. All rights of the Owner-Trustee hereunder (including, but not limited to, its rights under §§ 6, 7, 9, 10 and 23, and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Owner and any of the Owner's

assigns under the Trust Agreement.

§ 28. Subordination of Certain Payments. Notwithstanding any provision of § 6 or § 23 hereof, if an event of default (as defined in the Security Document) or event which with notice of lapse of time or both would constitute such an event of default shall have occurred and is continuing under the Security Document, no indemnity payment or increase in rental payment under § 6 or § 23 hereof shall be made by the Lessee to any person (other than the Vendor or any Investor), and, if any such payment is made, such person agrees, either as a party hereto or, if a third-party beneficiary hereof, as a condition to being such a third party beneficiary, to promptly forward any such payment to the Vendor to be applied in accordance with the provisions of the first paragraph of Paragraph 10 of the Participation Agreement; provided, however, the Lessee shall not be relieved hereby of its obligation to make any such payment after such event of default or event is no longer continuing.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

GREAT AMERICAN MANAGEMENT
SERVICES, INC.,

by Tom E. Pollack

[CORPORATE SEAL]

Attest:

William C. McDonald

FIRST SECURITY STATE BANK,
not in its individual capacity,
but solely as Owner-Trustee,

by Allen D. Harrison
Authorized Officer HEPT

[CORPORATE SEAL]

Attest:

Authorized Officer

STATE OF CALIFORNIA,)
) ss.:
 COUNTY OF SAN FRANCISCO,)

On this 27th day of JUNE 1978, before me personally appeared TOM E. POLLOCK III, to me personally known, who, being by me duly sworn, says that he is SECRETARY of GREAT AMERICAN MANAGEMENT SERVICES, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



[Notarial Seal]

Sharon N. Gamet
 Notary Public

My Commission Expires

~~STATE OF UTAH,~~)
~~DISTRICT OF COLUMBIA~~) ss.:
~~COUNTY OF SALT LAKE,~~)

On this 30th day of June 1978, before me personally appeared Allen H. Hemminger, to me personally known, who, being by me duly sworn, says that he is an Authorized ~~Officer~~ AGENT of FIRST SECURITY STATE BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Robert W. Center
 Notary Public

[Notarial Seal]

My Commission Expires May 31, 1979

My Commission Expires

Schedule A to Flat Car Lease

| <u>Type</u> | <u>Builder's Specification and Intended Service</u> | <u>Builder's Plant</u> | <u>Quantity</u> | <u>Estimated Unit Base Price</u> | <u>Estimated Total Base Price</u> | <u>Road Numbers (Inclusive)</u> | <u>Estimated Time and Place of Delivery</u> |
|-----------------------|---|----------------------------|-----------------|--|---|---|---|
| New rack flat cars | Ford F70770714 latest revision | Winder, Ga. | 105 | \$32,531 | \$3,415,755 | ROCK 990042 to ROCK 990146 | 50 units not later than August 11, 1978. 55 additional units not later than September 29, 1978. |
| | Ford F70770727 latest revision | Winder, Ga. | 45 | 32,600 | 1,467,000 | ROCK 995000 to ROCK 995044 | 23 units not later than October 31, 1978. 22 additional units not later than December 4, 1978. |
| | General Motors F70770714 latest revision | Winder, Ga. | 42 | 32,531 | 1,366,302 | ROCK 990000 to ROCK 990041 | 5 units not later than September 29, 1978. 37 additional units not later than October 31, 1978. |
| | General Motors F70770727 latest revision | Winder, Ga. | 37 | 32,600 | 1,206,200 | ROCK 995045 to ROCK 995081 | Not later than December 4, 1978. |
| | Place of delivery: Winder, Georgia. | | 229 | | \$7,455,257 | | |

L(F) - 51
Schedule B to -
Flat Car Lease

CASUALTY VALUES* - 229 Flat Cars

| Item I: | Calculation Date (22nd day of the following month): | Percentage of <u>Purchase Price</u> | Calculation <u>Date</u> | Percentage of <u>Purchase Price</u> |
|---------|--|--|----------------------------|--|
| | | | 3/1989 | 61.515438 |
| | 3/1979 | 85.471869 | 6/1989 | 60.266504 |
| | 6/1979 | 85.852821 | 9/1989 | 59.988688 |
| | 9/1979 | 86.164960 | 12/1989 | 57.681323 |
| | 12/1979 | 86.406571 | 3/1990 | 56.343725 |
| | 3/1980 | 86.602167 | 6/1990 | 54.975196 |
| | 6/1980 | 86.715535 | 9/1990 | 53.575019 |
| | 9/1980 | 86.766554 | 12/1990 | 52.142462 |
| | 12/1980 | 86.753681 | 3/1991 | 50.676779 |
| | 3/1981 | 86.697262 | 6/1991 | 49.177200 |
| | 6/1981 | 86.563980 | 9/1991 | 47.642944 |
| | 9/1981 | 86.370971 | 12/1991 | 46.073210 |
| | 12/1981 | 86.116762 | 3/1992 | 44.467173 |
| | 3/1982 | 85.818878 | 6/1992 | 42.823998 |
| | 6/1982 | 85.449933 | 9/1992 | 41.142825 |
| | 9/1982 | 85.024286 | 12/1992 | 39.422773 |
| | 12/1982 | 84.540542 | 3/1993 | 37.705725 |
| | 3/1983 | 84.013390 | 6/1993 | 36.183369 |
| | 6/1983 | 83.421464 | 9/1993 | 34.678283 |
| | 9/1983 | 82.776323 | 12/1993 | 33.177735 |
| | 12/1983 | 82.076660 | 3/1994 | 31.681848 |
| | 3/1984 | 81.334292 | 6/1994 | 30.180132 |
| | 6/1984 | 80.543985 | 9/1994 | 28.701341 |
| | 9/1984 | 79.735085 | 12/1994 | 27.231602 |
| | 12/1984 | 78.907481 | 3/1995 | 26.827656 |
| | 3/1985 | 78.060737 | 6/1995 | 26.406046 |
| | 6/1985 | 77.194413 | 9/1995 | 25.981458 |
| | 9/1985 | 76.308056 | 12/1995 | 25.546271 |
| | 12/1985 | 75.401200 | 3/1996 | 25.100233 |
| | 3/1986 | 74.473375 | 6/1996 | 24.635538 |
| | 6/1986 | 73.524092 | 9/1996 | 24.166848 |
| | 9/1986 | 72.552858 | 12/1996 | 23.686515 |
| | 12/1986 | 71.559164 | 3/1997 | 23.194265 |
| | 3/1987 | 70.542491 | 6/1997 | 22.682267 |
| | 6/1987 | 69.502308 | 9/1997 | 22.165156 |
| | 9/1987 | 68.438071 | 12/1997 | 21.656373 |
| | 12/1987 | 67.349223 | 3/1998 | 21.130537 |
| | 3/1988 | 66.235194 | 6/1998 | 20.753367 |
| | 6/1988 | 65.095404 | 9/1998 | 20.482285 |
| | 9/1988 | 63.929258 | 12/1998 | 20.000000 and |
| | 12/1988 | 62.736144 | | thereafter |

*The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the above schedule opposite each such rental payment date.

Item II:

Anniversary of
Delivery and
Acceptance

Percentage of
Purchase Price

Third
Fifth
Seventh

19.630193
13.086797
6.543400